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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-1246

UNITED STEELWORKERS OF AMERICA, AFL-CIO and its Local Unions 2601, 2602, 2603, 2604 and 3144,

Petitioners,

v.

GEORGE H. WILLIAMSON, JR., TIMOTHY SMITH, JAMES B. LINDSAY, EDWARD GREEN, JR., WILLIAM A. CLARK and VELVET BROWN, JR.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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STATEMENT

The petition in the instant case, filed by the United Steelworkers and four of its locals (hereinafter collectively referred to as the "Union"), seeks review of the identical decision from which petitioner Bethlehem Steel Corporation seeks review in 72-1004. Because this second petition raises very little new (and nothing of merit) we incorporate by reference all of our brief in opposition to

the petition for certiorari in 72-1004 as our primary reply to this new petition by the company's Union allies. We shall reply briefly, however, to each of the reasons asserted by the Union for granting a writ:

I.

PRIVATE LITIGANTS ARE NOT BOUND TO SUFFER DISCRIMINATION BECAUSE THE ATTORNEY GENERAL DID NOT SEEK RELIEF AGAINST IT.

The Union, without citing any case authority, asserts in its petition the same arguments raised by the company that these recalcitrant law breakers were granted a irrevocable license to continue to discriminate against black victims of their asserted acts of discrimination because the attorney general brought a law suit in which he did not seek relief against these unlawful practices. The Union concedes that the attorney general did not seek such relief (Petition at pages 5-6) but argues that the interest in repose outweighs the national policy against race discrimination embodied in the Civil Rights Act. This order of priorities is out of touch with the intent of Congress. See *Newman v. Piggie Park*, 390 U.S. 400, 402 (1968) (national policy against racial discrimination is "of the highest priority").

The Union also argues that it is "cruel" to the white workers to cut off the "tail" of discrimination one piece at a time. The simple answer to this is that if the tail were not so long it would not require so much cutting. These unions which supposedly represent the black workers at Bethlehem have acted in concert with the employer to engage in a pattern of discrimination which both the District Court and the Court of Appeals in *United States v. Bethlehem Steel* charitably termed "sorry". After years

of continuing to discriminate against workers whom it is bound by law to represent and appearing in every forum to oppose an effective remedy to the complex problems it has created, the Union has the affrontery to characterize the victims' demand for relief as "cruel."

It is the Unions themselves, with the company, who have created the problem and resisted any effective solution to it. Their *whole* membership would have been better served if the Union had five years ago represented *all* of their members interests. It was the Unions' duty then as it is now, not to seek to perpetuate discrimination, but seek a solution fair to all.

We believe that this Court, by vacating the stay in this case (order of March 26, 1973) has already seen the frivolousness of petitioners' position. In any case for the reasons stated here and in our reply brief and in 72-1004, the Union's petition here is without merit and not adequate grounds for granting a petition for a writ of certiorari.

II.

THE ISSUE OF THE PROPER REMEDY IS NOT NOW BEFORE THE COURT.

The Union also argues that the law does not allow a remedy to the victims of a discriminatory recall from the layoff system because to give the black victims of discrimination fair treatment will upset the expectations of the white workers to continue to benefit from the discrimination. It calls the remedy "bumping" and cites authority for the proposition that "bumping" will not be allowed. Its position on the merits of this issue is frivolous as its failure to cite authority and distinguish directly contrary authority on point indicates. Nowhere in its discussion of this issue does the Union even

mention *U.S. v. Hayes International*, 456 F.2d 112 (C.A. 5, 1972), which specifically states that modification of a discriminatory recall from layoff system is mandated by Title VII. We respectfully submit that the principles enunciated in *Hayes* and the long line of cases cited in our brief of 72-1004 states the controlling law with respect to this issue.

The merits aside, however, the simple answer to this argument at this point is that this issue is not before the Court. The court below ordered that this case be remanded to the District Court to fashion "full, fair, just and adequate relief." Until the District Court has had an opportunity to hold a hearing and order such relief, there is no issue of "bumping" before this Court. What the Union is asking this Court to do is to decide in the abstract and without an order from the district court whether some hypothetical relief would be appropriate. It is surprising that attorneys with the experience of counsel for the Union would ask this Court for an advisory opinion.

CONCLUSION

For the foregoing reasons and for the reasons stated in our reply in the petition for 72-1004, the petition for certiorari should be denied. Indeed, in the special circumstances in this case, including the attempt by the Union to prolong the stay in this case (See Application No. A-920 (USCA2 #72-1420) to vacate stay, granted March 26, 1973) this Court should use its powers under Supreme Court Rules 56(4) and 57(7) and Section 706(k) of Title VII of the Civil Rights Act of 1964 (42

U.S.C. §2000e-5(k)) to award respondents damage for delay, double costs and attorneys fees[1] against both petitioner here and in 72-1004.

Respectfully submitted,

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[1] *Green v. McDonnell Douglas Corp.*, 463 F.2d 337, 352 (8th Cir. 1972) (cert. granted); *Newman v. Piggie Park Enterprises*, 390 U.S. 400, 402 (1968); *Malone v. North American Rockwell Corp.*, 457 F.2d 779 (5th Cir. 1972); *Parham v. Southwestern Bell Co.*, 433 F.2d 421, 2 FEP Cases 1017, 1024 (8th Cir. 1970); *Fogg v. New England Tel. & Tel. Co.*, ____ F. Supp. ____, 5 FEP Cases 8 (D. N.H. 1972).